

November 29, 2012

VIA EMAIL

Regional Senior Justice Charles T. Hackland
Ottawa Courthouse
161 Elgin Street
Ottawa, Ontario
K2P 2K1

Clayton Ruby, C.M.
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Dear Senior Regional Justice Hackland:

Re: Paul Magder v. Robert Ford
Court File No. CV-12-448487

I am writing in response to Mr. Lenczner's correspondence to you dated November 28, 2012 regarding the interpretation of paragraph 60 of your judgment. In the final sentence of this paragraph you state, "I decline to impose any further disqualification from holding office beyond the current term."

There has been speculation about the meaning of this sentence *only* because Mr. Ford has expressed the view—not shared by the City Solicitor—that he can run in any by-election that may be held to fill his vacant seat. In our view, your use of the phrase "current term" is clear. The word "term" is defined by statute. Section 6(1) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32 provides:

Four-year term

6. (1) The term of all offices to which this Act applies is four years, beginning on December 1 in the year of a regular election.

As Mr. Ford was elected into office in 2010, it is clear to us that your judgment disqualifies him from holding office until the end of the December 1, 2010 to December 1, 2014 term. We did not read your judgment as reducing this statutorily prescribed term for members of municipal councils.

This reading is also consistent with sections 204, 208-209 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, which collectively provide that when a seat on Toronto's City Council is declared vacant in any judicial proceeding, the term does not end but the balance is instead completed by another individual:

Vacant seat

204. The office of a member of city council becomes vacant if the member,

...
(f) has his or her office declared vacant in any judicial proceeding;

...

Filling vacancies

208. (1) If a vacancy occurs in the office of a member of city council, the City shall, subject to this section,

- (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

...

Term of office, vacancy

209. A person appointed or elected to fill a vacancy under section 208 holds office for the remainder of the term of the person he or she replaced

If Mr. Ford wishes to challenge this aspect of your judgment, the proper forum in which to do so is on appeal before the Divisional Court.

Should you wish to clarify the meaning of the phrase “current term” in para. 60 of your judgment—which we do not think is necessary—we submit that the best way to do so is to insert the date of the end of the term in the judgment, which is December 1, 2014.

Please note that if you wish oral submissions on this issue I am available for an in-person meeting of the parties to discuss this request for clarification, if necessary, on Monday, December 3, 2012 at 1:00 p.m. Alternatively, I am available the balance of this week or Tuesday, December 4, 2012 to discuss the matter via teleconference.

Yours truly,



Clayton Ruby

cc: Mr. Alan J. Lenczner, Q.C.
Mr. Andrew Parley